Cultural and Organizational Aspects of Application of the Americans with Disabilities Act to Persons with Psychiatric Disabilities

DAVID MECHANIC

Rutgers University

IN MARCH 1997, THE U.S. EQUAL EMPLOYMENT Opportunity Commission (EEOC) issued new enforcement guidance for persons with psychiatric disabilities under the Americans with Disabilities Act (ADA) of 1990 (Equal Employment Opportunity Commission 1997). The ADA, barring employment discrimination against qualified persons with disabilities, was a landmark in the extension of civil rights that resulted from vigorous, persistent advocacy by many groups of persons with disabilities and their supporters. Central to the Act is the requirement that employers provide reasonable accommodation to qualified individuals with disabilities, unless these accommodations pose an undue hardship. The EEOC reports that, during the four-year period between 1992 and 1996, almost 13 percent of the charges of employment discrimination filed with the EEOC were based on emotional or psychiatric impairments (Equal Employment Opportunity Commission 1997, 1). From the beginning, it was clear that psychiatric disabilities involved difficult determinations. Many of the legal and administrative aspects are reviewed in a volume produced by the John D. and Catherine T. MacArthur Foundation Research Network on Mental Health and the Law (Bonnie and Monahan 1997). In this article I seek to cast a somewhat broader net by examining some social and cultural conceptions that are likely to affect implementation of the ADA in the area of psychiatric disorders.

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Background

Psychiatric conditions, particularly those relating to psychoses and substance abuse, carry a much greater stigma than do physical disabilities. Data from the 1996 General Social Survey, which is representative of the United States population, indicate that from 70 to 90 percent of respondents believe that persons with a drug abuse disorder or schizophrenia are not able to make treatment or money management decisions, and a majority of the population views them as potentially violent to others (Pescosolido et al. 1997). Although perceptions of alcoholism and major depression were less harsh, responses to questions about these conditions also indicated considerable suspicion by the public of persons with these disorders. Depending on the condition being surveyed, anywhere from 30 to 70 percent of respondents viewed persons afflicted with mental illness as likely to be violent and unable to manage their affairs. It should be no surprise, then, to find these attitudes reflected in the workplace, however poorly they fit reality.

Work in American society is a source of meaning and respect, and exclusion from work and productive activity undermines self-worth and reinforces devaluation and social stigma. Persons with severe psychiatric disabilities perceive finding or keeping a job as their greatest social need; those excluded from work experience great difficulty in filling their lives with meaningful activity (Uttaro and Mechanic 1994). The right to work understandably has played an important role in the disability rights movement, and most people with disabilities have the capacity to contribute productively to America's work force. In a supplement on serious mental illness and disability to the 1989 National Health Interview Study, researchers from the National Institute of Mental Health reported that, even among persons with serious mental illness, fewer than half were unable to work or were limited by their illness in the work they could do. Only 29 percent were described as unable to work at all (Barker et al. 1992). The concept of inability to work is itself a fuzzy one that is influenced by the person's past experiences, motivation, incentives for entering a disability program, and the willingness of employers to make accommodations.

The underlying philosophy of the disability rights movement is based on the idea that disability is an interaction between the individual's impairments and environmental factors (Pope and Tarlov 1991). Indi-

viduals with impairments can make use of opportunities and participate more fully if the environment does not impose barriers or is organized to reduce natural obstacles. The participation of persons with physical impairments is facilitated by making homes, workplaces, buildings, transportation conveyances, and recreational facilities accessible to them. Such accommodations have transformed the lives of many persons with impairments. Impairments only become disabilities when certain roadblocks in the environment cannot be modified to allow for reasonable participation. These range from technical, social, or financial constraints, to acts of prejudice and discrimination, and even to negative attitudes and motivations sometimes found in persons with impairments themselves.

Psychiatric impairments pose additional challenges because they can be difficult to distinguish from the cognitive and behavioral performance intrinsic to many jobs. The abilities to work effectively in work teams, to interact sensitively and responsively with customers and the public, to contribute to a cooperative and harmonious work environment, to maintain appropriate concentration on work tasks, and the like may be part of an employer's expectations, but they constitute a repertoire of skills that can be diminished by a psychiatric disorder. Similarly, other aspects of work conduct, such as arriving to work on time, dressing appropriately, and avoiding excessive absenteeism, can be affected by mental illnesses. Some psychiatric diagnoses, particularly personality disorders, are largely defined by deviant forms of conduct (Wakefield 1992; Mechanic 1997). At the same time, work and other life opportunities for persons with mental illness are often limited by the inaccurate stereotypes and fears subscribed to by employers and the general public, which result in stigma, discrimination, and exclusion (Diksa and Rogers 1996; Pescosolido et al. 1997). As a matter of social policy, the goal is to encourage realistic and fair public conceptions and avoid supporting viewpoints that are inaccurate and wounding.

Congress did not help the matter when it introduced an explicitly moral dimension to ADA coverage by excluding certain mental disorders it viewed as signs of "badness," rather than of "sickness": various sexual behaviors, compulsive gambling, kleptomania, pyromania, and substance abuse disorders resulting from illegal use of drugs. The congressional concerns are not very different from those of the public, which associates drug abuse with irresponsibility and potential violence and evinces little sympathy for accommodating such persons or providing treatment at public expense (Pescosolido et al. 1997).

Those covered under the ADA are persons with a physical or mental impairment that substantially limits one or more major life activity, persons with a record of such impairment, and persons regarded as having such an impairment. In hiring, employers are prohibited from inquiring about these impairments but they may explore the applicant's capacity to perform all tasks necessary to the job. In many physical disabilities, we have a fairly clear standard for limitations as defined by the ability to perform usual activities of daily living, although there can be problematic aspects to physical impairments, those affecting the back being one example (Osterweis, Kleinman, and Mechanic 1987). However, limitation criteria of psychiatric disorders are broader, and the universe is more difficult to specify. As a result of a psychiatric disorder, persons may be sleep deprived, may find it hard to concentrate, may be easily distracted, may have difficulty responding under stress, may avoid or have unusual interactions with coworkers, may talk or respond in seemingly irrational ways, and so on. Persons with serious mental illnesses also may have episodic and unpredictable symptoms. They may appear perfectly normal much of the time but perform poorly during difficult times in their lives, when they are under more than usual stress, or when they deviate from a required medication regimen.

The ADA defines mental impairments as those disorders recognized as such by the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, which is currently in its fourth edition. A large proportion of the population has had this kind of disorder at least once in their lives. The National Comorbidity Study, a nationally representative epidemiological survey of the prevalence of a subset of the most important diagnoses, estimated that about half of the population has had such a disorder at some point, with about 30 percent experiencing a form of mental illness in the previous year (Kessler et al. 1994). A survey involving all DSM disorders would approach complete coverage, making the DSM criterion rather useless in distinguishing among those who should be covered or not. Thus, the real criterion, is whether the impairment substantially limits one or more major life activities. As the EEOC readily acknowledges, there are no exhaustive lists of major life activities.

Examples of life activities potentially affected by mental impairments are learning, thinking, concentrating, interacting with others, caring for oneself, speaking, performing manual tasks, sleeping, or working

(Equal Employment Opportunity Commission 1997). Even in extreme cases, it is impossible to discern when a diminished ability to perform in these areas results from an impairment and when it stems from motivational or other factors. Thus, it is not difficult to make a claim of having a psychiatric impairment that severely limits one's range of activity. Fortunately, the costs of unreasonable attempts to do so usually far outweigh any possible benefits.

Reasonable Accommodation

The requirement to provide reasonable accommodation to a person with a psychiatric disability is consistent with the value that persons with disabilities are an important part of our community and that some investment from the community to enable their increased participation and contribution is a public good. The EEOC rightfully recognizes that formulating a clear, practical definition of what is "reasonable" and what constitutes an "undue hardship" that excludes an employer from responsibility is impossible, and therefore that a determination must be made on the basis of the facts surrounding particular instances. Thus, the agency offers employers guidance in the form of examples of situations that require such accommodations. In making distinctions among the situations, they particularly focus on conduct and direct threats, which are issues of concern to employers and constitute areas of application that we know little about. I briefly discuss some of these examples before turning to broader considerations.

Conduct

The EEOC has clarified that an employer has the right to discipline an employee who violates a workplace standard, even when the conduct is the result of a disability, if the standard is job related and consistent with business necessity. Such enforcement must also be applied uniformly to any other worker performing comparable functions. Of the three examples provided as guidance, two are extreme (stealing money from the employer and intentionally damaging equipment) and are not helpful in dealing with more typically ambiguous

cases. Even the third example, which describes an employee whose job is loading boxes and who has no contact with customers or regular interaction with other employees, is not particularly representative.

This employee (Example C) is described as follows:

His clothes are ill-fitting and often have tears in them. He also has become increasingly anti-social. Co-workers have complained that when they try to engage him in casual conversation, he walks away or gives a curt reply. When he has to talk to a co-worker, he is abrupt and rude. His work, however, has not suffered.

He accounts for his behavior as due to an exacerbation of his disability. Despite the fact that the employer described here requires all employees to have a neat appearance at all times and to be courteous to each other, this person still cannot be legally disciplined because the rules are neither job related nor consistent with business necessity.

Within the facts, as described, the determination that the employee cannot legally be disciplined seems reasonable if he or she has a disability resulting in the troublesome behavior and if he or she continues to perform job functions satisfactorily. A good employer, in addition, would offer help and guidance to the employee in overcoming the current difficulty. Changing the facts a bit, however, may be more representative of real cases and may also indicate some of the difficulties likely to occur in the workplace. Assume this worker is required to have some customer contact as well as more dealings with coworkers, while engaging in comparable behavior. At what point does the fact that a worker is alienating customers, or creating unpleasant and distracting scenes in the workplace, establish a lack of capacity to perform his job. Anyone with work experience knows the degree to which one difficult person can poison the workplace, make everyone else's job unpleasant, and drive away valuable employees. The EEOC treats job performance as autonomous, outside a social context, but even discretely defined jobs are carried out in social situations that affect others. Most persons with psychiatric disabilities are conscientious, reliable, and helpful employees, and are good coworkers as well. The absence of real guidance in the occasional problematic case, however, leaves employers uneasy and may have unintended, undesirable effects for persons with mental disabilities.

Making Accommodations

Under the law, employers are required to make reasonable accommodations that do not impose undue hardships to help qualified persons with a disability meet future job-related conduct standards. To the extent that such accommodations are simple, such as protecting the worker from upsetting distractions, or rearranging his or her schedule without affecting the work of others, they usually pose no large difficulties. The more troubling dilemma here is knowing what constitutes a reasonable accommodation, how much it can reasonably interfere with the schedules and efforts of other workers, and how to apply it in a manner that neither stigmatizes the employee nor upsets others. Many employers know little about psychiatric illness and are uncomfortable dealing with the issue (Office of Technology Assessment 1994). Moreover, they are constrained by law in what they can divulge about a mentally ill employee to other employees, and they must be highly skilled in successfully managing difficult relations in the workplace. The risk here is that inadequate guidance, and concern that an employee once hired will be difficult to terminate whatever the facts, will reduce the likelihood of employers' knowingly hiring persons with psychiatric disabilities, no matter what their qualifications and potential. Although such discrimination is illegal, enforcement is almost impossible.

Employers are not permitted to ask persons about mental illness, but there are many common ways of observing and making inferences about this area of varying reliability. Employers may take note of people's demeanor, affect, patterns of communication, gaps in work history, and the side effects of medication that can be manifested in psychomotor responses. The irony, however, is that persons most likely to be screened out in this way are precisely those who most need ADA protections. Thus, the ADA in reality offers more advantages to persons already on a job or to those applying for a job who show no evidence of psychiatric disability.

Because of the stigma of mental illness, most employees with a psychiatric disability are likely to be reluctant to ask for accommodation. We have no adequate information on who among persons with psychiatric disabilities asks for such assistance, but the opportunity is likely to attract some particularly difficult and manipulative people, who will use this mechanism to protect themselves from disciplinary actions. The extent to which this is a problem is not clear, but many employers fear it as a possibility. The issue for them is not whether the case law is

balanced and will ultimately support their conduct requirements but, rather, the hassles associated with litigation, or even with mediation. All such activities are costly in terms of time, energy, and money.

Some of the frustrations from an employer's perspective can be illustrated in the examples offered by the EEOC. Consider the following:

A reference librarian frequently loses her temper at work, disrupting the library atmosphere by shouting at patrons and co-workers. After receiving a suspension as the second step in uniform, progressive discipline, she discloses her disability, states that it causes her behavior, and requests a leave of absence for treatment. The employer may discipline her because she violated a conduct standard—a rule prohibiting disruptive behavior toward patrons and co-workers—that is job-related for the position in question and consistent with business necessity. The employer, however, must grant her request for a leave of absence as a reasonable accommodation, barring undue hardship, to enable her to meet this conduct standard in the future.

Requests for leaves of absence are common in ADA complaints, but the example fails to provide guidance if problems resurface when the employee returns. In real life, many such problems are persistent or episodic, and the employee often continues to “act out,” creating new difficulties with clients or coworkers. The problems may differ from one occasion to another, but pose more serious challenges to the employer than can be resolved by this short-term strategy. Moreover, the accommodations sought may pose difficulties that are too great simply to be patched up by a temporary leave of absence. Does reasonable accommodation include redesigning the job in order to reduce contact with disliked coworkers, providing a more attractive physical location, or setting up a preferential schedule? Many employers would want to do this for a particularly valuable worker, but what if the worker, although qualified, is only marginal in performance? What if such accommodations for a disliked, and minimally productive, worker adds to the work pressures on other employees, causing resentment and affecting morale? Despite evidence of successful accommodation through the use of positive attitudes and skillful counseling (Mancuso 1990, 1997; MacDonald-Wilson and Whitman 1995), many difficult issues remain.

Although employers theoretically have a legal right under the ADA to discipline, or even to terminate, the employee for inappropriate work-relevant conduct, the process of doing so is time consuming and costly,

as every step must be documented. Many employers, particularly those using relatively few workers, resent the bureaucratic processes required to withstand a challenge. Moreover, becoming involved in such disputes is upsetting. Employers are commonly counseled by consultants to write job descriptions carefully and to compile rules of conduct in order to protect themselves should they wish to discipline an employee, but small firms typically operate more informally. Large companies will have human resources specialists to manage problems, and such firms are often in a stronger position to absorb or accommodate an employee who poses difficult work situations. Even in large firms, however, reluctance to employ persons with psychiatric disabilities may increase because of the belief that the termination process, if required, would be long and difficult.

Threat. The media and the public commonly associate psychiatric disorder with unpredictability and danger, and the public has unrealistic fears of persons outside their circle of acquaintance whom they believe to have such disorders. As individuals have more contact with persons in this category, they learn to make more realistic distinctions. In the public mind, however, the image of the mentally ill person is someone who is either a “crazy,” as portrayed in the movies and television, or else is a disheveled and incoherent “street” person. The public does not understand such behavior and therefore fears it (Pescosolido et al. 1997). The behavior associated with acute psychoses often stigmatizes not only persons who experience mental illness in that form, but also those suffering from depression, anxiety disorders, and other common psychiatric conditions.

Mental health advocates have for many years maintained that persons with psychiatric illness are no more dangerous than the general public, but it is arguable whether such claims have altered public perceptions to a noticeable degree. More recent sophisticated studies document the fact that, whereas most persons with mental illness pose no larger threat than anyone else, persons in the psychotic phase of serious mental illness are nevertheless more dangerous (Swanson et al. 1990; Link, Andrews, and Cullen 1992). Even most individuals with active psychotic conditions are harmless, although their behavior may be frightening. Persons suffering psychotic symptoms are less dangerous than those who abuse alcohol and drugs, but the combination of psychoses and substance abuse increases problems. Despite the fears of many people, persons with mental illness in the workplace present no large risks. Indeed, most

pose a smaller risk than many young men or than persons who use alcohol and drugs (Swanson et al. 1990).

The ADA sets a high standard for what constitutes danger by requiring that the grounds for exclusion of a qualified person with a psychiatric disability from employment must take the form of a direct threat. Such a threat means a high (not simply a slightly increased) risk of "substantial harm to the individual or others that cannot be eliminated or reduced by reasonable accommodation" (Equal Employment Opportunity Commission 1997, 33). In the case of persons with psychiatric disabilities, the employer must identify the specific behaviors that would pose a direct threat while being prohibited from regarding the psychiatric disorder itself as evidence of such a threat. Any determination of threat must be based on an individualized evaluation of the person's ability to perform a job safely. Although it is clear that recent overt acts and statements that threaten safety are grounds for exclusion, it is not clear to what extent an employer can reasonably retrace the employee's work history in order to consider evidence of past threats to safety.

This standard obviously was constructed to protect individuals from being discriminated against and stigmatized by past events associated with a psychiatric disability that may be irrelevant to their qualifications for performing a job competently and safely. The difficulty is that, in a world dependent on rough estimates of the probabilities of future behavior under conditions of uncertainty, often our most reliable indicator is past performance. We assume that individuals who have proved conscientious, reliable, and trustworthy in the past are likely to continue to be so in the future. Employers filling important positions probe a person's history carefully, considering it to be the best indication of what they can expect. A legal requirement limiting such consideration may simply make this scrutiny less overt.

The Role of the ADA in Improving Opportunities for Persons with Psychiatric Disorders

The ADA constitutes only one step toward the integration of individuals with psychiatric disabilities into the workplace, and it is one that is readily exaggerated by both proponents and detractors. It offers new opportunities, but it also produces risks. Its impact is likely to be sim-

ilar to other changes affecting persons with psychiatric disorders (like the right to treatment, the right to refuse treatment, the obligation of therapists to warn, and many more), which resulted in fulfilling neither the hopes of advocates nor the worst fears of opponents (Appelbaum 1995). Systems responded pragmatically, and the courts were sensitive to the dilemmas that therapists and institutions faced. We can expect no less sensitivity toward employers (who are far more influential politically). It is unlikely that courts will allow employers to be unduly imposed on, but it is important also to work toward improving understanding and attitudes, as they often define the workplace reality (MacDonald-Wilson 1995).

Much of the public concern about requirements for accommodation of persons with psychiatric disabilities is focused less on persons with obvious impairments who aspire to work and more on the idea that manipulative, lazy, and otherwise disagreeable persons will use psychiatric disability as an excuse for poor performance, for seeking accommodations, and for shifting obligations onto their coworkers. The broadness of psychiatric definitions, the low validity of some of the diagnostic entities found in *DSM* (e.g., oppositional defiant disorder, hypoactive sexual desire disorder) (Kutchins and Kirk 1997), and the ambiguity about what constitutes a mental limitation encourage fears that individuals, with mental health professionals and lawyers acting as their agents, will take advantage of ambiguities. Further problems involve persons with physical or psychiatric disabilities who are clearly covered under the ADA but whose personalities are controlling and disagreeable and who inevitably create problems in the workplace. It is exceedingly difficult to differentiate behavior caused by a disability as defined under the Act from otherwise unpleasant and manipulative behavior. Even from a mental health perspective, accommodating persons with these personality deviations by failing to establish and enforce usual standards of performance and conduct is antitherapeutic. No doubt there will be abuses, as there are in the use of sick leave, workman's compensation, disability insurance, and every other program that seeks to protect individuals against life's adversities. The remedy is intelligent, informed, and practical implementation that restrains unreasonable expansion of definition and protects the social purposes of the ADA.

From the perspective of persons with psychiatric disabilities, the ADA is a gesture of symbolic importance because it asserts the view that

persons with psychiatric disorders are like the rest of us. They may have particular types of limitations (most of which can be accommodated), but this need not be their primary identity. They share our goals and aspirations and seek productive participation in the society. Symbols help, but they do not change the minds and behavior of the public. To achieve its potential, the ADA must be part of a larger effort to inform the public, to instruct employers more appropriately, and to address realistically the concerns, fears, and resentments of others at the workplace. I thus conclude this discussion by considering issues of confidentiality, employer and employee assistance, and ADA implementation.

Issues of Confidentiality

The need for a confidentiality requirement is obvious, but it also is a significant deterrent to the best use of the ADA. Many persons with psychiatric disabilities remain unwilling to reveal their disabilities or to seek accommodation for fear of stigma. This is a realistic fear. Mental health professionals remain ambivalent about disclosure, and some counsel their clients to lie, if necessary, in seeking employment. If an employee reveals his or her disability to an employer and seeks accommodation, the employer can inform the person's direct supervisor about work restrictions and necessary accommodations but cannot provide such information to coworkers. Consultants commonly instruct employers who seek guidance about how to handle this issue simply to tell coworkers that the employer is acting within the context of federal law. This may be legally correct, but it is not particularly helpful to anyone.

Such vagueness raises several problems. First, such a communication is likely to lead to rumor, speculation, and even hazing of the employee with a disability. It also may exclude the employee from informal work relations that often are counted as among the greatest satisfactions in work settings. Moreover, coworkers may discern that the employee has a psychiatric disability when limitations of activities are visible. The result thus could be considerably worse than when coworkers are better informed, made to feel part of a positive effort to help a fellow worker adjust to the work setting, and encouraged to reach out and assist that person in stressful situations (MacDonald-Wilson and Whitman 1995; Fishbein and Rottevel 1997). This remains a difficult and complicated area that requires much more research and training (MacDonald-Wilson 1997).

The challenge is to get beyond the legalistic and adversarial character of ADA complaint processes and litigation and come closer to the ADA's goal. In cases where the disability is visible, little is lost in disclosure, and such disclosure can be helpful not only in arranging the necessary accommodations but also in gaining the cooperation and help of coworkers. Moreover, concealment often has the effect of making individuals feel more discredited and impairs interaction. In contrast, a consultant serving as an agent of the employee, while also working cooperatively with the employer, may be helpful in mediating some of the tensions involved (Mancuso 1997; MacDonald-Wilson 1995). Such interventions have been constructive in vocational programs when "job coaches" work with both clients and employers to solve work problems as they arise.

Once the employee with a disability consents to disclosure, the consultant can assist in presenting this information in a helpful way. Employers, particularly those in smaller businesses without human resources departments, need assistance in working out accommodations and in communicating to coworkers. Effective implementation of the ADA requires considerable technical assistance to employers to help them overcome uncertainties and develop a constructive context for accommodation. To meet this need, some groups involved with the ADA are initiating projects to provide assistance through federal agencies and voluntary groups.

We know little, however, about employers' understanding of the ADA, particularly of the issues relating to psychiatric disabilities or of the assistance that is available and the pathways to obtaining it. What little we do know suggests that employers are not well informed (MacDonald-Wilson 1997). As a small "experiment," I have made efforts to locate such groups in order to obtain advice; I found that this is not likely to be an easy task for a small-business person seeking assistance. Assistance or referrals can come through government agencies that administer ADA programs, agencies dealing with mental illness, special programs and projects in the nonprofit sector, and advocacy groups for persons with disabilities, such as the National Alliance for the Mentally Ill and the Mental Health Law Project. Although I did not conduct an exhaustive inquiry, the source I found most useful was the Job Accommodation Network (JAN), a collaboration between the President's Committee on Employment of People with Disabilities and the West Virginia Rehabilitation Research and Training Center at West Virginia University (1-800-526-7234), funded by the Department of Labor. I was connected with an experienced psychologist in rehabilita-

tion who provides free assistance to employers and employees about accommodation issues, and I found her responsive and thoughtful. The National Institute on Disability and Rehabilitation Research has funded various resource and training services, including a resource center on psychiatric disabilities at the Washington Business Group on Health. The Washington Business Group has prepared an ADA information kit and information briefs that deal with psychiatric disabilities, but the prices charged for these products (\$70 and \$150, respectively) probably limit their distribution. The Center for Psychiatric Rehabilitation in Boston provides some useful information on accommodations through the Internet (<http://www.bu.edu/SARPSYCH/reasaccom.html>) and has been working on a project to identify and describe successful accommodations for persons with psychiatric disabilities. My interactions with organizations were simply first contacts that did not test whether they had the staying power to help resolve difficult workplace problems. However, it is evident that the available resources are meager relative to the magnitude of the challenge.

The confidentiality issue will remain a central one because persons with psychiatric disabilities who can avoid identification may find it in their interests to do so, given the extent of stigmatization. In recent years, many admired persons from sports, entertainment, academia, and public life, including author William Styron, presidential advisor Robert Boorstin, and psychiatry professor Kay Jamison, have disclosed publicly their psychiatric impairments and many aspects of their psychiatric histories. Such openness among successful and admired persons helps public understanding and reduces stigma. The National Alliance for the Mentally Ill has done much to encourage and disseminate this kind of disclosure as a means of achieving greater public acceptance of psychiatric impairments. Current surveys, however, suggest that the battle to reduce the stigma attached to them will not be won in the near future (Pescosolido et al. 1997).

Potential Effects of the ADA on Persons with Severe and Persistent Mental Illness

Many persons with even the most serious and persistent mental disabilities can work, but it is difficult to predict who in this group will do so successfully (Drake and Becker 1996; Becker et al. 1996; Bond et al.

1997). Studies suggest that there is little advantage in transitional employment strategies and that clients fare best when they directly enter competitive employment directly, and in an arena where they have some job choice. Persons with serious and persistent illness are not unrealistic about their work opportunities and do not have inordinately high expectations. Most occupy marginal positions that pay poorly: for example, those found in laundries and in food, messenger, and cleaning services. Clients with more education are increasingly being hired for data entry and secretarial work. Employers should be encouraged to provide opportunities for persons with severe disabilities because they can be conscientious and reliable workers, despite low self-confidence. One risk in rigid implementation of the ADA is that it discourages employers from giving such persons the needed opportunity. If employers believe it will be difficult and litigious to remove employees who do poorly, they will be unlikely to hire them. Unemployment is presently low and the demand for workers high. Incentives to employ persons with disabilities must also work in job markets where labor is abundant.

More than 30 years ago I helped a psychiatric colleague in London, England, develop a clerical unit that carried out routine survey functions in a psychiatric day hospital (Mechanic 1969, 114-15). The day hospital on the grounds of a famous psychiatric institution already used patients in various industrial assembly work that was contracted to the hospital. Although there was much clerical work to be done at the parent hospital, even enlightened psychiatrists at the time did not view patients as appropriate clerical personnel. We found, in contrast, that many, even very ill, clients could perform these secretarial/clerical tasks successfully, although accommodations were often needed. The clerical unit subsequently was successful in attracting clerical jobs from the very people who initially doubted the ability of the workers in that unit to perform such tasks..

Much has changed over the last 30 years. Treatment has improved for many psychiatric conditions, and the public is more accepting. Most persons with a history of mental illness work successfully in competitive employment and across the entire range of professional and other occupations. Many of even the most seriously and persistently mentally ill manage to do some work. Time has also taught us some important lessons. Members of the public who deal with persons with mental illness report that one of their greatest fears is that they will be unable to deal with a crisis situation should one arise. Landlords, employers,

and others in the community are much more cooperative if they know help is readily available in the event of some difficulty. The most successful community mental health programs work closely with landlords, employers, police, and others to instill a sense of confidence that assistance is there if it is needed. If the ADA is to be more than another middle-class entitlement for a small number of persons with disabilities who are well educated, efforts will have to be made to create a support structure for employers in every community. Continued efforts to educate the public will also be needed so that communities will become more aware of the realities of mental impairments.

Conclusion

The ADA as it affects persons with mental illness, like many laws, is more symbol than reality. Relatively few cases are adjudicated, and much goes on as it did before. The ADA's real potential is less in the cases that are litigated and more in the establishment of an accepted community standard for fairness. If the ADA is to achieve public trust and acceptance, the EEOC and the courts will have to be prudent and wise in balancing the rights of persons who claim mental disability and ask for accommodation with the social realities of the workplace. In the case of persons with severe and persistent mental illness, employers must have an opportunity for trial employment and the potential to remove employees who fail to do the job without great hassle. Lacking such assurance, employers may find all sorts of ways to avoid the risk. In the case of persons with lesser disorders and limitations, prudence and wisdom are needed to distinguish between true need for accommodation and the use of mental illness claims to manipulate others and seek special advantages. Unfortunately, psychiatric *DSM* criteria, and the medicalization of life problems it embodies, are not a helpful guide. Silly decisions by hearing officers and judges can do much to discredit a constructive social policy.

A significant lesson we have learned is that having a mental illness need not define one's capacities and personal identity, and disabilities may be incidental to successful role performance. We have also learned, however, that employers who are inexperienced or fearful need guidance, support, and tangible assistance with problems at the time that they occur. The ultimate success of legislation like the ADA depends on

public acceptance and support and on employers' sense that they can successfully cope with issues that might arise. There is much still to be done to develop such confidence and trust.

References

- Appelbaum, P.S. 1995. *Almost a Revolution: Mental Health Law and the Limits of Change*. New York: Oxford University Press.
- Barker, P.R., R.W. Manderscheid, G.E. Hendershot, S.S. Jack, C.A. Schoenborn, and I.D. Goldstrom. 1992. Serious Mental Illness and Disability in the Adult Household Population: United States, 1989. In *Mental Health United States 1992*, eds. R.W. Manderscheid and M.A. Sonnenschein, 255–68, table 7-2. DHHS pub. no (SMA) 92-1942. Washington, D.C.: Center for Mental Health Services and National Institute of Mental Health.
- Becker, D.R., R.E. Drake, A. Farabaugh, and G.R. Bond. 1996. Job Preferences of Clients with Severe Psychiatric Disorders Participating in Supported Employment Programs. *Psychiatric Services* 47:1223–6.
- Bond, G.R., R.E. Drake, K.T. Mueser, and D.R. Becker. 1997. An Update on Supported Employment for People with Severe Mental Illness. *Psychiatric Services* 48:335–46.
- Bonnie, R.J., and J. Monahan. Eds. 1997. *Mental Disorder, Work Disability and the Law*. Chicago: University of Chicago Press.
- Diksa, E., and E.S. Rogers. 1996. Employer Concerns About Hiring Persons with Psychiatric Disability: Results of the Employer Attitude Questionnaire. *Rehabilitation Counseling Bulletin* 40:31–44.
- Drake, R.E., and D.R. Becker. 1996. The Individual Placement and Support Model of Supported Employment. *Psychiatric Services* 47:473–5.
- Equal Employment Opportunity Commission 1997. Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities, H 915.002. (March 25th newsletter.)
- Fishbein, S.M., and J. Rotteveel. 1997. The ADA and Reasonable Accommodations: The Dilemma of Disclosure. *Community Support Network News* 12:6–8.
- Kessler, R.C., K.A. McGonagle, S. Zhao, et al. 1994. Lifetime and 12-month Prevalence of DSM-III-R Psychiatric Disorders in the United States: Results from the National Comorbidity Study. *Archives of General Psychiatry* 51:8–19.

- Kutchins, H., and S. Kirk. 1997. *Making Us Crazy: DSM, the Psychiatric Bible and the Creation of Mental Disorder*. New York: Free Press.
- Link, B.G., H. Andrews, and F.T. Cullen. 1992. The Violent and Illegal Behavior of Mental Patients Reconsidered. *American Sociological Review* 57:275–92.
- MacDonald-Wilson, K. 1995. Personal Experiences: Negotiating Reasonable Accommodations. *Journal of the California Alliance for the Mentally Ill* 6:35–7.
- . 1997. Reasonable Workplace Accommodations for People with Psychiatric Disabilities. *Community Support Network News* 12:1–4.
- MacDonald-Wilson, K., and A. Whitman. 1995. Encouraging Disclosure of Psychiatric Disability. *American Rehabilitation* 21:15–19.
- Mancuso, L.I. 1990. Reasonable Accommodations for Workers with Psychiatric Disabilities. *Psychosocial Rehabilitation Journal* 14:3–19.
- . 1997. Mediation of ADA Disputes. *Community Support Network News* 12:14–16.
- Mechanic, D. 1969. *Mental Health and Social Policy*. Englewood Cliffs, N.J.: Prentice Hall.
- . 1997. Psychopathology and Public Policy. *Clinical Psychology: Science and Practice* 4:272–5.
- Office of Technology Assessment. 1994. *Psychiatric Disabilities, Employment, and the Americans with Disabilities Act Background Paper*. OJA-BP-13BS-124. Washington, D.C.
- Osterweis, M., A. Kleinman, and D. Mechanic. Eds. 1987. *Pain and Disability: Clinical, Behavioral, and Public Policy Perspectives*. Washington, D.C.: National Academy Press.
- Pescosolido, B.A., J. Monahan, B.G. Link, A. Stueve, and M.S. Kikuzawa. 1997. The Public's View of Individuals with Mental Health Problems: Competence, Dangerousness and the Need for Coercion in Health Care. Paper presented at the Annual Meeting of the American Sociological Association, Toronto, Ontario.
- Pope, A.M., and A.R. Tarlov. Eds. 1991. *Disability in America: Toward a National Agenda for Prevention*. Washington, D.C.: National Academy Press.
- Swanson, J.W., C.E. Holzer III, U.K. Ganju, and R.T. Jono. 1990. Violence and Psychiatric Disorder in the Community: Evidence from the Epidemiologic Catchment Area Surveys. *Hospital and Community Psychiatry* 41:761–70.
- Uttaro, T., and D. Mechanic. 1994. The NAMI Consumer Survey Analysis of Unmet Needs. *Hospital and Community Psychiatry* 45:372–4.

Wakefield, J.C. 1992. Disorder as Harmful Dysfunction: A Conceptual Critique of DSM-III-R's Definition of Mental Disorder. *Psychological Review* 99:232–47.

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Address correspondence to: David Mechanic, PhD, Institute for Health, Health Care Policy, and Aging Research, Rutgers University, 30 College Avenue, New Brunswick, NJ 08901.